IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 228 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DEVJI DHULAJI MENA - Original Accused - Appellant

Versus

STATE OF GUJARAT - Respondent

Appearance:
MR AR THACKER for Appellant
MR KP RAVAL, APP for Respondent

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE K.R.VYAS

Date of decision: 28/08/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI for the Court)

1. The appellant challenges the judgement and order dated 8th June 1994 of the learned Additional Sessions Judge, Nadiad in Sessions Case No. 227 of 1993 convicting the appellant for the offence under section

20(b) of the Narcotic Drugs & Psychotropic Substance Act, 1985 and sentencing him to rigorous imprisonment for a term of ten years and payment of fine of Rs.1 lakh, in default to undergo further rigorous imprisonment for a period of three years.

2. The appellant - accused was charged for the offence under section 20(b) of the said Act by Charge exh.2 dated 15th April 1994 on an allegation that, on 23rd June 1993 in the evening at about 6.15 p.m., the accused was found in possession of 4.8 kgs of `ganja' near the petrol pump of village Reliya of Kapadvanj Taluka in the Kheda district. The accused pleaded not guilty to the charge. The trial Court, on the basis of the material on record, came to a finding that the accused was found to be in possession of `ganja' as alleged by the prosecution and convicted the accused for the offence under section 20(b) of the Act, sentencing him rigorous imprisonment of ten years and a fine of Rs.1 lakh, as stated above.

3. Panch Mukundbhai Panchal, in his deposition exh.12, has proved the contents of the panchnama exh.13. He has stated that the accused was having a black `theli' from which the `ganja' was recovered. In his cross-examination, he has denied the suggestion that the `ganja' was not recovered from the accused. The contents of the panchnama exh.13 corroborates his version and it shows that when the accused was apprehended near the bus stand of village Reliya on 23rd June 1993, 4.8 kgs of `ganja' was recovered from him and seized under the panchnama exh.13. The seized material was forwarded for chemical analysis and the report of the Senior Scientific Assistant of the Forensic Science Laboratory which is at exh.11, shows that the Narcotic Division of the Laboratory had examined the material and the result of the analysis was that the material was "vegetative material alongwith female flowering tops of plant cannabis sative (ganja)". As per the deposition of the investigating officer - Ranjitsinh Bahadursinh Rana exh.16, deposition of Pratapsinh Dashrathsinh, who was alongwith Rana at exh.20, as also the deposition of Visiji Dhanjibhai who was in charge of the police station at exh.21, the prosecution has been able to establish beyond any reasonable doubt that the accused was apprehended with 4.8 kgs of `ganja' on 23-6-1993 at 6.15 p.m. in village Reliya near the petrol pump and that all the procedure prescribed under the said Act was duly observed. We therefore find no merit in the challenge of the appellant against his conviction under section 20(b) of the said Act.

4. The learned counsel appearing for the appellant contended that since the accused was found guilty of the offence of possessing `ganja', the maximum punishment prescribed under section 29(b)(i) was rigorous imprisonment for a term of five years and a fine of Rs.50,000=00. It was submitted that the learned trial Judge had however erroneously invoked the provisions of section 20(b)(ii) of the said Act which applied for contraventions relating to cannabis other than `ganja'. It is not disputed by the learned counsel appearing for the State that the conviction of the accused has been for contraventions relating to `ganja' and therefore, the provisions of section 20(b)(i) of the said Act were applicable in the instant case and that the maximum punishment of imprisonment could be for five years only. Under section 20(b)(i), where contraventions relate to `ganja' or the cultivation of cannabis plant, the punishment prescribed is of rigorous imprisonment for a term which may extend to five years and a fine which may extend to Rs.50,000=00. The trial Court therefore clearly erred in passing the sentence under section 20(b)(ii) of the said Act which could not have been invoked since the case admittedly related to contravention of the provisions relating to `ganja'. The sentence imposed on the accused, therefore, cannot be sustained and we accordingly modify the same as under.

:: ORDER ::

The appeal is partly allowed, and while confirming the conviction of the accused for the offence under section 20(b)(i) of the Narcotic Drugs & Psychotropic Substance Act, 1985, the sentence imposed on him by the trial Court of rigorous imprisonment of ten years and fine of Rs.1 lakh is hereby set aside, and instead, the accused - Devjibhai Dhulaji Mena is sentenced to suffer rigorous imprisonment for a term of five years and to pay a fine of Rs.5,000=00, in default to undergo further rigorous imprisonment for six months.

AUGUST 28, 2001 [R.K.ABICHANDANI, J.]

[K.R.VYAS, J.]

parmar*